

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Aug 25, 2016

Action Requested By: Parking

Agenda Type: Resolution

Subject Matter:

Resolution authorizing the Mayor to enter into a Nissan EV Charger Donation Agreement between the City of Huntsville and Nissan North America, Inc.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Nissan EV Charger Donation Agreement between the City of Huntsville and Nissan North America, Inc.

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: n/a

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: Aug 22, 2016

RESOLUTION NO. 16-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, the Mayor be and is authorized to enter into an agreement by and between the City of Huntsville and Nissan North America, Inc., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Nissan EV Charger Donation Agreement between the City of Huntsville and Nissan North America, Inc.", consisting of four (4) pages and the date of August 25, 2016, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, a copy of said document being permanently kept on file on the Office of the City Clerk-Treasurer, of the City of Huntsville, Alabama.

ADOPTED this the 25th day of August, 2016.

President of the City Council of the
City of Huntsville, Alabama

APPROVED this the 25th day of August, 2016.

Mayor of the City of Huntsville,
Alabama

NISSAN EV CHARGER DONATION AGREEMENT

THIS AGREEMENT, effective _____, 2016, (the "Effective Date") by and between CITY OF HUNTSVILLE, AL, an entity having its principal place of business at 308 Fountain Circle, Huntsville, Alabama 35801 (hereinafter referred to as "Company"), and NISSAN NORTH AMERICA, Inc., a California corporation having its headquarters at One Nissan Way, Franklin, TN 37067 (hereinafter referred to as "Nissan");

1. Nissan agrees to donate and Company agrees to accept one (1) BTC Power 208V 50kW DC Fast [EVFC-50-208] electric vehicle charger(s) (the "Charger(s)") "as is" and in their present condition. Company acknowledges that Nissan makes no representations or warranties with respect to the Charger(s) pursuant to this Agreement. Nissan assumes no responsibility for Company's losses, liability, damages, costs or expenses arising directly or indirectly out of the manufacture, installation, maintenance or operation of the Charger(s), including but not limited to, personal injury, property damage or economic damage directly or indirectly caused by the Charger(s). COMPANY AGREES AND UNDERSTANDS THAT NISSAN MAKES NO WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Company shall receive all rights, titles and interest in the Charger(s) upon shipment. Further, consistent with a donation, Nissan shall have no obligations for the repair, maintenance, or for the replacement of parts or for providing engineering services, or any other obligations with respect to the Charger(s). NISSAN will order the Charger(s) and pay for all shipping costs to the installation site located at 203 Fountain Cir SW Huntsville, AL 35801.

2. By 10/31/2016, Company shall deploy and have in good operational standing and condition the Charger(s), each of which are incremental to any existing chargers Company has in operation at the time of executing this Agreement.

3. For two years from the date of this Agreement, Company shall use all commercially reasonable efforts to ensure that charging sessions can be activated and the Charger(s) can charge a vehicle at all times and that each Charger shall suffer no more than forty-eight (48) hours of inoperability in any calendar month nor more than eight hours of inoperability in each of more than two out of four consecutive months.

4. Unless Company restricts general public access to the site, the Charger(s) must be accessible and available to the general public without special permission. If Company subsequently elects to network the Charger(s), Charger(s) and associated network equipment must be networked to a participating NCTC network provider and accept the EZ-Charge All Access Interoperability Card.

5. When the Charger(s) and related equipment and site have received all required permits, passed all inspections and testing and is operating properly Company shall notify Nissan or its designee in writing that the Charger(s) have been installed in compliance with all legal requirements and is/are operating properly. Company shall also send digital pictures of the installed Charger(s) and site. At any time thereafter, upon the request of Nissan or its designee, Company shall provide on its letterhead a confirmation of the Charger(s) hours of operation during the period specified by Nissan.

6. Within ten (10) days of the Effective date, Company shall provide NISSAN a properly completed Form W-9. Nissan obligations under this Agreement are conditioned on Nissan's receipt of the Form W-9. Nissan will provide Company with a Form 1099 for tax purposes no later than January 31, 2017 or January 31, 2018, as appropriate.

7. Nissan may require Company to return the Charger if Company fails to comply with the terms and conditions of this Agreement during its term. If Nissan determines to require return of the Chargers, Nissan will provide Company with written notification thereof by certified mail. City will

have an opportunity to contest or cure within fifteen (15) days, and otherwise Company will be required to return the Chargers within thirty (30) days of receipt of such notification.

8. Company shall contract with Pro Electric, Inc. to install the Charger described herein. Pro Electric, Inc. has executed an indemnification agreement in favor of Nissan of North America, Inc., which is attached hereto and incorporated herein by reference as Exhibit "A".

9. Nissan and Company shall not acquire any rights under this Agreement to use the name of the other party, or any variation thereof, in any advertising, publicity or promotion, without the party's prior written consent. Each party agrees to seek guidance and the other party's approval prior to making any public commentary, including any original or subsequent press release, website posting, or other social media channels. At no time should details of this Agreement be discussed with any third parties in explicit or implicit terms unless such discussion or disclosure is required by law. Where disclosure is required by law, Company agrees to give Nissan notice of the request for disclosure and to disclose only that portion of the Agreement that it is legally compelled to disclose.

10. This Agreement contains the entire agreement and understanding between the Parties, and there are no oral understandings, terms, or conditions not herein recited, and neither party has relied upon representations, expressed or implied, not contained in this Agreement. All prior understandings, terms, or conditions are deemed to be merged in this Agreement and the same shall not be changed or supplemented orally by either party.

11. Nissan prohibits its employees from using their position for personal financial gain. Accordingly, Company shall not offer any gifts, gratuities, "kickbacks," accommodations, loans, entertainment, or anything which could improperly obligate or influence decisions in dealing with NISSAN employees. Company shall strictly adhere to all laws regarding commercial bribery, kickbacks, or other similar matters.

12. Company agrees that, in the performance of this Agreement, it will not knowingly discriminate or permit discrimination against any person or group of persons on the grounds of sex, race, religion, age, disability, sexual orientation or national origin or in any manner prohibited by the laws of the United States, and all states in which it operates.

13. No Assignment. Company has been retained to provide services hereunder because of Company's commitments contained in this Agreement, and further, because of Nissan's confidence in Company, which confidence is personal in nature. Company may not assign this Agreement or delegate its duties hereunder without the prior written consent of Nissan. The provisions hereof will be binding upon and inure to the benefit of the Parties, their successors and permitted assigns.

14. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS OR LOST REVENUE.

(this space intentionally left blank)

IN WITNESS HEREOF, the Parties hereto have executed this Agreement by their respective duly authorized representatives as of the date first above written.

CITY OF HUNTSVILLE, AL

NISSAN NORTH AMERICA, INC.

By: _____

By: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

Attest:

By: _____

Kenneth Benion

Clerk-Treasurer

INDEMNITY AGREEMENT

In Favor Of

**NISSAN NORTH AMERICAN, INC.
One Nissan Way
Franklin, TN 37067**

In connection with the donation agreement dated August 25, 2016 between Nissan North American Inc. ("NNA") and the City of Huntsville, Alabama (the "City") pursuant to which NNA is donating a BTC Power 208V 50kW DC Fast [EVFC-50-208] electric vehicle charger (the "Charger") to the City, NNA requires [Electrical contractor] installing the Charger on behalf of the City, Contractor hereby undertakes and agrees to indemnify, defend and hold NNA, its officers, directors, employees, parents, subsidiaries and affiliates, harmless from and against any and all claims, demands, causes of action, suits, proceedings, damages, judgments, fines, penalties, losses, liabilities, costs and expenses, including attorneys' fees and in-house counsel fees, related to, in connection with, arising from or alleged to arise from, any faulty or defective installation of the Charger.

The validity, interpretation and construction of this Indemnity Agreement and all other matters related to this Indemnity Agreement, will be governed and interpreted by the laws of the State of Tennessee. Any action brought to enforce this Indemnity Agreement shall be brought in the state court in Williamson County, Tennessee or federal court as provided below. Contractor consents to the exclusive jurisdiction of the appropriate state court in Williamson County, Tennessee or, if original jurisdiction can be established, in the federal court in the U.S. District Court for the Middle District of Tennessee in connection with any action with respect to the violation this Agreement.

Executed this 19 day of August, 2016,

Pro Electric Inc.

By: Robert H. Walker

Title: Sec/Exec

Date: 8-19-2016